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Subject: Request for Comment, NUREG-1307
(77 Fed. Reg. 58,591, Sept. 21, 2012)

Florida Power and Light Company, the licensee for the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4, and its affiliates, NextEra Energy Seabrook, LLC, the licensee for the Seabrook Station, NextEra Energy Duane Arnold, LLC, the licensee for the Duane Arnold Energy Center, and NextEra Energy Point Beach, LLC, the licensee for the Point Beach Nuclear Plant, Units 1 and 2 (hereafter referred to collectively as "NextEra"), hereby submit the following comments on Revision 15 of NUREG-1307, "Report on Waste Burial Charges," in response to the above-referenced Federal Register notice issued by the NRC. In a subsequent Federal Register Notice (77 Fed. Reg. 64,361, Oct. 19, 2012) the due date for comments was extended to November 15, 2012.

NextEra endorses the comments of the Nuclear Energy Institute on Revision 15 ("NEI Comments"), dated November 15, 2012, and offers the following additional comments.

As is explained in the NEI Comments, the process set forth in 10 C.F.R. § 50.75(c) for calculating the minimum decommissioning funding amount vests the NRC Staff with the responsibility to produce a crucial component of the decommissioning funding formula – the escalation factor for the cost of low-level radioactive waste ("LLW") disposal – with no formal rulemaking procedures. While the calculated minimum decommissioning funding amount is treated as a binding and enforceable requirement, the burial factor component published periodically in NUREG-1307 has never been formally incorporated by reference into NRC regulations and is published without either Commission input and review or the formal notice-and-comment process required for binding and enforceable rules.

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The formula in 10 C.F.R. § 50.75(c) contains three components over which the NRC Staff has no direct control – the generic decommissioning cost estimate in 1986 dollars and the escalation factors for labor and energy. But because it publishes NUREG-1307, the NRC Staff can specify the LLW burial escalation factor and, ultimately, the output of the regulatory formula. In order for 10 C.F.R. § 50.75(c) to function as intended, NUREG-1307 must focus solely on the escalation of LLW burial costs as is plainly intended by the rule. But in Revision 15, the ratio of vendor disposal to direct disposal was changed from 85/15 to 60/40 thus forcing a significant increase in the required minimum funding formula calculation, with little apparent relationship to actual LLW disposal costs.

The NRC held a public meeting on November 7, 2012, to discuss industry comments on Revision 15. At that meeting, the staff presentation included a slide that stated that the change to the vendor option burial factor was made to “further bring the formula decommissioning cost estimate into alignment with site-specific decommissioning cost estimates.”¹ NRC Presentation at Slide 8. At the meeting, the NRC Staff explained that the NRC minimum formula, set forth by regulation, produces a required minimum decommissioning funding amount that is less than the NRC Staff believes to be appropriate based on real-world decommissioning examples and industry site-specific cost estimates. It went on to explain that “Draft NUREG-1307, Rev. 15, attempts to better align the formula estimate and the site-specific decommissioning cost estimates.” NRC Presentation at Slide 9. The Staff also explained at the November 7 meeting that it has no evidence to indicate that changes to burial costs are the reason for the perceived shortfall in the NRC minimum funding calculation.

In promulgating 10 C.F.R. § 50.75(c), the Commissioners approved by rulemaking a formula to determine the minimum required amount of decommissioning funding. The formula relies upon NUREG-1307 to provide a credible estimation of LLW burial cost escalation. If the NRC Staff believes that the regulatorily-prescribed formula produces an unacceptably low minimum required funding amount, it should initiate a rulemaking proceeding through which the Commission can determine whether to amend the formula.

In fact, as the Commission explained in a July 2012 letter from Chairman MacFarlane to Congressman Markey responding to a Government Accountability Office (“GAO”) report, the Commission’s “decommissioning funding formula provides a credible and well-documented basis for establishing the minimum amount of funding needed to decommission a reactor, as recommended by the GAO guidelines.”² GAO Letter, Encl. at 2. But the NRC can and will reevaluate the formula to ensure it remains credible, as part of an ongoing reevaluation. *Id.* The letter to Congressman Markey highlighted the appropriate way to reevaluate the NRC minimum formula, noting that “[t]he NRC staff will make a *recommendation to the Commission* early in 2013 on the need to revise the minimum formula.” *Id.* (emphasis added).

¹ The NRC presentation is available in ADAMS at Accession No. ML12312A011.

² Letter from Allison M. MacFarlane, Chairman, Nuclear Regulatory Commission, to the Honorable Edward J. Markey, U.S. House of Representatives (July 11, 2012). Available at ADAMS Accession No. ML12157A365.

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Further, Revision 15 reflects a misunderstanding of site-specific cost estimates provided to the NRC by its licensees because it fails to properly account for the distinction between Class A LLW, which may be disposed of at the EnergySolutions site in Clive, Utah, and Class B and C LLW, which must be disposed of at a "full-service" disposal facility, like that at Barnwell, South Carolina. Revision 15 correctly recognizes that the relevant price distinction is between Clive prices and "full-service" prices of a facility like Barnwell, but makes two key errors. First, Revision 15 attempts to apply these price differences to its existing "direct disposal" versus "vendor disposal" dichotomy. But, as is explained in the NEI Comments, the key distinction is not whether a vendor is utilized, but which type of disposal facility will be used.

Second, it applies Clive prices to the "vendor disposal" portion and Barnwell prices to the "direct disposal" portion even though it is clear that large majorities of the waste classified as direct disposal will ultimately be sent to Clive. Revision 15 assigns only 60% of the LLW to the vendor option with Clive prices, even though the industry cost estimates it references indicate that at least 95% of the LLW will be disposed of at the Clive facility. As a result, Revision 15 assigns a full 40% of the LLW to Barnwell pricing, even though the industry site-specific cost estimates indicate that less than 5% of the LLW will be Class B or C LLW that must be disposed of at a full-service disposal facility like Barnwell. The only rationale for using Barnwell pricing should be to estimate the disposal cost of Class B and C LLW, not to represent pricing for LLW destined for Clive.

To illustrate this point, Table A-4 of Revision 15 references the site-specific cost estimate for NextEra's Duane Arnold Energy Center ("DAEC"). Revision 15 interprets the DAEC cost estimate to reflect that 100% of the LLW resulting from the decommissioning of DAEC would be direct disposal. Under this reading, all of the DAEC LLW would be disposed of at a full-service disposal facility like Barnwell. Revision 15 uses this reading of the DAEC cost estimate to help justify increasing the "direct disposal" portion from the 15% in Revision 14 to 40% in Revision 15. But the DAEC cost estimate is clear that approximately 99% of the LLW by volume would be Class A waste, which, as a result of a Life-of-Plant Agreement with EnergySolutions, would be disposed of at the Clive site. The remaining approximately 1% of the waste would be Class B or C and may need to be sent to a full service disposal facility. Thus, Revision 15 interprets the DAEC cost estimate almost completely backwards. Instead of reflecting 100% Barnwell pricing, the DAEC cost estimate instead reflects approximately 99% Clive pricing.

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As is more fully explained in the NEI Comments, the NRC should replace the outdated vendor/direct dichotomy in NUREG-1307 with a more straightforward distinction based on the ratio of the LLW classes. This would support a ratio of 95/5 instead of 60/40. A 95/5 ratio would actually still retain some conservatism because many plants, like DAEC, have a ratio closer to 99/1. Cost estimates for the other NextEra/FPL reactors all have LLW ratios consistent with a 95/5 ratio. Further, as the NRC recognizes in Revision 15, there can often be significant cost savings through volume discounts. Revision 15 currently assumes that an unsupportably small ratio of LLW will be disposed of at the Clive facility and ignores volume discounts, each of which results in costs higher than would be expected.

In conclusion, we appreciate the NRC's concern that the minimum decommissioning funding amount calculated via 10 C.F.R. § 50.75(c) should be close to the actual cost of decommissioning. However, it should be noted that the formula amount is not intended to be a full accounting of that cost, but instead, to represent the "bulk" of that cost as a decommissioning funding floor. If the NRC determines that the current formula does not, in fact, reflect the bulk of license termination costs, it should initiate a rulemaking proceeding to reconsider the formula.

We appreciate the NRC's consideration of NextEra's views on this important matter.

Sincerely Yours,



Larry Nicholson
Director of Licensing